



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,190	01/22/2002	Bernadette M. Gibbs	53394.000564	9683

7590 04/19/2006

Christopher C. Campbell, Esq.
Hunton & Williams
Suite 1200
1900 K Street
Washington, DC 20006-1109

EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
----------	--------------

3761

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/051,190

Applicant(s)

GIBBS, BERNADETTE M.

Examiner

Karin M. Reichle

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-22, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) 2, 5, 7 and 9-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3, 4, 6, 8, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 2, 5, 7 and 9-22 are still withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4-22-05 and 2-22-05.

Specification

Drawings

2. The drawings were received on 2-2-06. These drawings are approved by the Examiner.

Claim Language Interpretation

3a. The claim language is interpreted in light of the definitions set forth on page 6, line 11-page 7, line 22, page 8, lines 2-4, 8-10, and 21-24, page 9, lines 19-23, page 16, line 22-page 17, line 1, and page 19, lines 7-12 and 16-18. It is again noted that "tab" is defined by the dictionary as "a projection, flap or short strip attached to an object to facilitate opening, handling or identification". It is further noted that the new claim terminology "unitary" is not explicitly defined. It is further noted that "unitary" is defined by the dictionary as "Of or pertaining to a unit. Having the nature of a unit; whole. Based on or characterized by one or more units". "Unit" is defined by the dictionary as "a mechanical part or module. An entire apparatus or the equipment that performs a specific function". Therefore, it is noted that a monolithically formed

Art Unit: 3761

tab has still not been claimed, i.e. the tab can be formed of composite element, i.e. of integrally connected portions, and still be "unitary" as defined. It is further noted, especially in light of Applicant's arguments, that the fastener tab 32 described by the instant application is not monolithically formed but rather a composite element, see Figure 3 of the instant application, i.e. formed of integrally connected portions so as to be "unitary". It is noted that claims 24 and 25 require a dead zone attached to and located substantially in a central region of the tab. This is interpreted to require a dead zone which is attached to, directly or indirectly, the central third of the tab and more than 50% of which is located in such central third. It is noted that neither the claims nor the description specifically define what the extent of the central region is relative to the other regions/zones or the tab nor do they require that the dead zone overlie the centerline of the tab but the claim does define such zone as dividing the tab chassis into two regions, i.e. three regions/zones. Claims 24 and 25 also require a gripping zone attached to and located substantially at an edge of the tab. Similarly such language will be interpreted to require a gripping zone which is attached to, directly or indirectly, an edge of the tab and more than 50% of which is located at such edge.

Claim Rejections - 35 USC § 102

3b. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 3-4, 6, 8 and 24-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson GB '067.

Claims 24-25: See the Claim Language Interpretation section *supra*, and '067 at the Figures, especially 5, 9-14, and, e.g., page 6, line 16-page 7, line 27, page 19, lines 17 et seq, page 20, line 22-page 21, line 8, page 23, line 20-page 25, line 5, page 25, line 23-page 27, line 27, page 31, line 23-page 32, line 20 and page 36, lines 1-18, i.e. the garment is 20, the waist regions are 40 and 38, the chassis is at least 22, the core is 26, the "unitary" "tab" is 89 or, in other words, 90 and 44, directly attached to the waist region of 20, the dead zone is 98, the first elastic zone is between 40 and 98 and the second elastic region is on the opposite side of 98 between 98 and at least the edge adjacent region 92, the gripping zone is at least a portion of 44 (it is noted the claim language "attached" includes both direct and indirect attachment). The stretch resistance of the first zone is at least as great as that of the second zone since they are formed of the same elastic material. The dead zone, i.e. the stress beam section 98, is explicitly disclosed as being formed of nonelastic material or densified or embossed portions of the 90, i.e. stiffer than the portions forming the elastic regions and attached to the tab. Therefore it is the Examiner's first position that the Johnson reference explicitly teaches a "dead zone" having more stretch resistance than the elastic regions. In any case, the Examiner's second position, the factual evidence of the composition of the stress beam sections is sufficient for one to conclude that the stress beam section of Johnson inherently has more stretch resistance than the elastic regions, see MPEP 2112.01. As shown in, e.g., Figure 13, a dead zone, i.e. 124 or at least one of 122, is attached to and has more than 50% thereof located in the central third of 89 and the gripping zone 44 is attached to and more than 50% thereof, i.e. the free portion of 44, is located at the edge of the tab.

Claims 3-4, 6, and 8: See the Figures specified *supra*.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 3-4, 6, 8, 24 and 25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 25-52 of U.S. Patent No. 6,740,071 in view of Johnson '067. Although the conflicting claims are not identical, they are not patentably distinct from each other because since this application was filed after the patents, the *In re Vogel* one way test applies, i.e. is the invention of the application obvious in view of the invention of the claims of the patent? The answer is yes. The claims of the application are both broader and narrower than the claims of the patent. Specifically the application claims do not require 1) the dead zone necessarily be inelastic, the stretch of a first elastic region extending from the waist region to the zone having only a greater stretch than a second elastic region on the other side of the zone and the tensile forces as claimed in claim 25 and the specifics of claims 26-52 but does require 2) a dead zone attached to and located substantially in a central region of the tab as claimed in claims 24 and 25, the shape and orientation of such zone as claimed in claims 3-4 and an absorbent garment having a chassis and a core as claimed in claim 25, and

Art Unit: 3761

thus, explicitly, the edge as claimed in claim 8. With regard to claim 6, see claim 30 of the patent. With regard to 1), in essence once the applicant has received a patent for a species or more specific embodiment he/she is not entitled to a patent for the generic or broader invention.

This is because the more specific anticipates the broader. Thus the respective patent claims anticipate the application claims. See *In re Goodman*, supra. With regard to 2), see claims 34-39 and 48-50 and the preamble of claim 25 of '071, i.e. the tab is intended to be used with an absorbent garment and the dead zone is between and can be longer, shorter or the same length as the elastic regions, i.e. occupies some portion of the tab between the two elastic regions.

Furthermore see the cited portions of Johnson supra, i.e. absorbent garments are known to include a chassis and a core and zones which function as less elastic zones positioned between more elastic regions are substantially located in a center region of the tab, i.e. the lengths of the regions and zone are such as to substantially centrally locate the zone, are rectangular and are oriented to have a longitudinal axis of such shape perpendicular to the longitudinal axis of the tab but parallel to the longitudinal axis of the absorbent garment. Therefore, to employ an absorbent article having a chassis and core as taught by Johnson in combination with the claimed tab would be obvious to one of ordinary skill in the art in view of the recognition that such structure of an absorbent garment is known and the desire of the application claims to be used for, i.e. in combination with, absorbent garments. Furthermore to make the zone which functions as a less elastic zone between more elastic regions of the patent claims one which is substantially located in the center zone of the tab, i.e. the lengths of the regions and zone are such as to centrally locate the zone, is rectangular and is oriented to have a longitudinal axis of such shape perpendicular to the longitudinal axis of the tab but parallel to the longitudinal axis of the

Art Unit: 3761

absorbent garment as taught by Johnson would be obvious, see *In re Siebentritt*, 54 CCPA 1083 (two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution not needed to render such substitution obvious). In so doing, the tab would necessarily and inevitably also have edges which function as claimed in application claim 8.

With regard to the added claim language, see “unitary” as defined by the Claim Language Interpretation section *supra*, the claims of the patent, i.e. the “tabs” therein are “unitary”, and the teachings of Johnson, i.e. “tab” directly attached or combined with the absorbent garment.

7. Claims 3-4, 6, 8, 24 and 25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 26-54 of U.S. Patent No. 6,692,477 in view of Johnson ‘067. Although the conflicting claims are not identical, they are not patentably distinct from each other because since this application was filed after the patents, the *In re Vogel* one way test applies, i.e. is the invention of the application obvious in view of the invention of the claims of the patent? The answer is yes. The claims of the application are both broader and narrower than the claims of the respective patent. Specifically the application claims do not require 1) the dead zone necessarily be inelastic, the stretch of the first elastic region extending from the waist region having only a greater stretch than a second elastic region on the other side of the inelastic zone claimed in claim 26 and the specifics of claims 27-54 but does require 2) a dead zone attached to and located substantially in a central region of the tab as claimed in claims 24 and 25, and an absorbent garment having a chassis and a core as claimed in claim 25, and thus, explicitly, the edge as claimed in claim 8. With regard to claims 3-4 and 6, see claims 26 and 31 of the patent. With regard to 1), in essence once the applicant has received a patent for a species or more specific embodiment he/she is not entitled to a patent for the

Art Unit: 3761

generic or broader invention. This is because the more specific anticipates the broader. Thus the respective patent claims anticipate the application claims. See *In re Goodman*, supra. With regard to 2), see claims 35-40 and 50-52 and the preamble of claim 26 of the patent, i.e. the tab is intended to be used with an absorbent garment and the dead zone is between and can be longer, shorter or the same length as the elastic regions, i.e. occupies some portion of the tab between the two elastic regions. Furthermore see the cited portions of Johnson supra, i.e. absorbent garments are known to include a chassis and a core and zones which function as less elastic zones positioned between more elastic regions are substantially located in the center region of the tab, i.e. the lengths of the regions and zone are such as to substantially centrally locate the zone. Therefore, to employ an absorbent article having a chassis and core as taught by Johnson in combination with the claimed tab would be obvious to one of ordinary skill in the art in view of the recognition that such structure of an absorbent garment is known and the desire of the application claims to be used for, i.e. in combination with, absorbent garments. Furthermore to make the zone which functions as a less elastic region between more elastic regions of the patent claims one which is substantially located in the center region of the tab, i.e. the lengths of the regions and zone are such as to substantially centrally locate the zone, as taught by Johnson would be obvious, see *In re Siebentritt*, 54 CCPA 1083 (two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution not needed to render such substitution obvious). In so doing, the tab would necessarily and inevitably also have edges which function as claimed in application claim 8. With regard to the added claim language, see the discussion in paragraph 6 which also applies here.

Art Unit: 3761

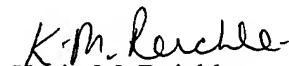
however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to claims 24 and 25.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
April 11, 2006